

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES JACKSON and KYLE B.
RICHARDS,

Plaintiffs,

v

RICK SNYDER, et al.,

Defendants.

Case No. 1:12-cv-1134

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Plaintiffs' claims of retaliation and cruel and unusual punishment. Plaintiff Richards filed a Motion for Summary Judgment (Dkt 138). Defendants also filed a Motion for Summary Judgment (Dkt 141). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending Plaintiff Richards' motion be denied, Defendants' motion be denied without prejudice, Plaintiff Richards' remaining claims be dismissed, and the matter terminated (Dkt 153 at PageID.793). The matter is presently before the Court on Plaintiff Richards' Objection to the Report and Recommendation (Dkt 154). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff Richards essentially argues that the Magistrate Judge erred in two respects. First, Plaintiff asserts that the Magistrate Judge failed to read the amended complaint (Dkt 31) as

identifying claims against Defendants by both Plaintiffs Jackson and Richards (Obj., Dkt 154 at PageID.799). Second, Plaintiff contends that the Magistrate Judge had already “screened” Plaintiffs’ amended complaint, thereby recognizing Plaintiffs’ claims against Defendants (*id.* at PageID.800). Plaintiff’s Objection also contains rhetoric expressing dislike of the American judicial system, asserting violence as the only remedy, and demanding a certificate of appealability (*id.* at PageID.801-02).

I.

Plaintiff argues that the Magistrate Judge erred when she failed to identify the claims expressed in the amended complaint as belonging to both Plaintiffs Jackson and Richards (*id.* at PageID.799-800). Plaintiff’s argument fails to demonstrate any factual or legal error in the Magistrate Judge’s analysis or conclusion. The Magistrate Judge properly recommended dismissal of Plaintiff’s claims against Defendants Heyns, Datims, Hickok, Warr, and Frieburger for failing to state a claim upon which relief may be granted.

As the Magistrate Judge correctly articulated in her Report and Recommendation, “Plaintiffs’ amended complaint [] contains absolutely no allegations of conduct by Defendants Heyns, Datims, Hickok, Warr, or Frieburger against Plaintiff Richards” (R & R, Dkt 153 at PageID.795). Plaintiffs’ allegations against these Defendants relate to only Plaintiff Jackson. Plaintiff Jackson’s claims have already been dismissed (Dkt 119 at PageID.518-519, 522); therefore, Plaintiff fails to state a claim upon which relief may be granted.

II.

Plaintiff Richards argues that the Magistrate Judge should have recognized the claims in the amended complaint as viable with respect to him because the Magistrate Judge already conducted

a preliminary screening and issued service of the amended complaint, and because “[t]here [have] been several motions, [] reports, and opinions all ‘recognizing’ Plaintiff Richards[’] claims against Defendants” (*id.* at PageID.800-01).

While the Court allowed service of Plaintiffs’ claims against Defendants following an initial screening of their amended complaint (Order, Dkt 39), Plaintiff cites no authority precluding a Magistrate Judge, after discovery and briefing on summary judgment, from subsequently reviewing the claims for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)). Here, although Plaintiffs’ amended complaint may have alleged facts that, if true, were sufficient to survive a preliminary screening, the Magistrate Judge properly determined that the claims failed to state a claim upon which relief may be granted as to Plaintiff Richards. For the reasons stated above, Plaintiff’s objection fails to demonstrate any error by the Magistrate Judge.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Because this resolves the remaining pending claims in this case, a Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Further, because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 154) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 153) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff Richards' Motion for Summary Judgment (Dkt 138) is DENIED; Defendants' Motion for Summary Judgment (Dkt 141) is DENIED without prejudice; Plaintiff Richards' remaining claims are DISMISSED; and this case is terminated.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the decision would not be taken in good faith.

Dated: March 15, 2016

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge